

2 **2SHB 3070** - S AMD (S5425.1) - 883
3 By Senator Roach

4 ADOPTED AS AMENDED 3/5/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
8 each reenacted and amended to read as follows:

9 (1) A person who is convicted of a violation of RCW 46.61.502 or
10 46.61.504 and who has no prior offense within ((five)) seven years
11 shall be punished as follows:

12 (a) In the case of a person whose alcohol concentration was less
13 than 0.15, or for whom for reasons other than the person's refusal to
14 take a test offered pursuant to RCW 46.20.308 there is no test result
15 indicating the person's alcohol concentration:

16 (i) By imprisonment for not less than one day nor more than one
17 year. Twenty-four consecutive hours of the imprisonment may not be
18 suspended or deferred unless the court finds that the imposition of
19 this mandatory minimum sentence would impose a substantial risk to the
20 offender's physical or mental well-being. Whenever the mandatory
21 minimum sentence is suspended or deferred, the court shall state in
22 writing the reason for granting the suspension or deferral and the
23 facts upon which the suspension or deferral is based; and

24 (ii) By a fine of not less than three hundred fifty dollars nor
25 more than five thousand dollars. Three hundred fifty dollars of the
26 fine may not be suspended or deferred unless the court finds the
27 offender to be indigent; and

28 (iii) By suspension of the offender's license or permit to drive,
29 or suspension of any nonresident privilege to drive, for a period of
30 ninety days. The period of license, permit, or privilege suspension
31 may not be suspended. The court shall notify the department of
32 licensing of the conviction, and upon receiving notification of the
33 conviction the department shall suspend the offender's license, permit,
34 or privilege; or

35 (b) In the case of a person whose alcohol concentration was at
36 least 0.15, or for whom by reason of the person's refusal to take a

1 test offered pursuant to RCW 46.20.308 there is no test result
2 indicating the person's alcohol concentration:

3 (i) By imprisonment for not less than two days nor more than one
4 year. Two consecutive days of the imprisonment may not be suspended or
5 deferred unless the court finds that the imposition of this mandatory
6 minimum sentence would impose a substantial risk to the offender's
7 physical or mental well-being. Whenever the mandatory minimum sentence
8 is suspended or deferred, the court shall state in writing the reason
9 for granting the suspension or deferral and the facts upon which the
10 suspension or deferral is based; and

11 (ii) By a fine of not less than five hundred dollars nor more than
12 five thousand dollars. Five hundred dollars of the fine may not be
13 suspended or deferred unless the court finds the offender to be
14 indigent; and

15 (iii) By revocation of the offender's license or permit to drive,
16 or suspension of any nonresident privilege to drive, for a period of
17 one year. The period of license, permit, or privilege suspension may
18 not be suspended. The court shall notify the department of licensing
19 of the conviction, and upon receiving notification of the conviction
20 the department shall suspend the offender's license, permit, or
21 privilege.

22 (2) A person who is convicted of a violation of RCW 46.61.502 or
23 46.61.504 and who has one prior offense within ((five)) seven years
24 shall be punished as follows:

25 (a) In the case of a person whose alcohol concentration was less
26 than 0.15, or for whom for reasons other than the person's refusal to
27 take a test offered pursuant to RCW 46.20.308 there is no test result
28 indicating the person's alcohol concentration:

29 (i) By imprisonment for not less than thirty days nor more than one
30 year. Thirty days of the imprisonment may not be suspended or deferred
31 unless the court finds that the imposition of this mandatory minimum
32 sentence would impose a substantial risk to the offender's physical or
33 mental well-being. Whenever the mandatory minimum sentence is
34 suspended or deferred, the court shall state in writing the reason for
35 granting the suspension or deferral and the facts upon which the
36 suspension or deferral is based; and

37 (ii) By a fine of not less than five hundred dollars nor more than
38 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be
2 indigent; and

3 (iii) By revocation of the offender's license or permit to drive,
4 or suspension of any nonresident privilege to drive, for a period of
5 two years. The period of license, permit, or privilege revocation may
6 not be suspended. The court shall notify the department of licensing
7 of the conviction, and upon receiving notification of the conviction
8 the department shall revoke the offender's license, permit, or
9 privilege; or

10 (b) In the case of a person whose alcohol concentration was at
11 least 0.15, or for whom by reason of the person's refusal to take a
12 test offered pursuant to RCW 46.20.308 there is no test result
13 indicating the person's alcohol concentration:

14 (i) By imprisonment for not less than forty-five days nor more than
15 one year. Forty-five days of the imprisonment may not be suspended or
16 deferred unless the court finds that the imposition of this mandatory
17 minimum sentence would impose a substantial risk to the offender's
18 physical or mental well-being. Whenever the mandatory minimum sentence
19 is suspended or deferred, the court shall state in writing the reason
20 for granting the suspension or deferral and the facts upon which the
21 suspension or deferral is based; and

22 (ii) By a fine of not less than seven hundred fifty dollars nor
23 more than five thousand dollars. Seven hundred fifty dollars of the
24 fine may not be suspended or deferred unless the court finds the
25 offender to be indigent; and

26 (iii) By revocation of the offender's license or permit to drive,
27 or suspension of any nonresident privilege to drive, for a period of
28 nine hundred days. The period of license, permit, or privilege
29 revocation may not be suspended. The court shall notify the department
30 of licensing of the conviction, and upon receiving notification of the
31 conviction the department shall revoke the offender's license, permit,
32 or privilege.

33 (3) A person who is convicted of a violation of RCW 46.61.502 or
34 46.61.504 and who has two or more prior offenses within ~~((five))~~ seven
35 years shall be punished as follows:

36 (a) In the case of a person whose alcohol concentration was less
37 than 0.15, or for whom for reasons other than the person's refusal to
38 take a test offered pursuant to RCW 46.20.308 there is no test result
39 indicating the person's alcohol concentration:

1 (i) By imprisonment for not less than ninety days nor more than one
2 year. Ninety days of the imprisonment may not be suspended or deferred
3 unless the court finds that the imposition of this mandatory minimum
4 sentence would impose a substantial risk to the offender's physical or
5 mental well-being. Whenever the mandatory minimum sentence is
6 suspended or deferred, the court shall state in writing the reason for
7 granting the suspension or deferral and the facts upon which the
8 suspension or deferral is based; and

9 (ii) By a fine of not less than one thousand dollars nor more than
10 five thousand dollars. One thousand dollars of the fine may not be
11 suspended or deferred unless the court finds the offender to be
12 indigent; and

13 (iii) By revocation of the offender's license or permit to drive,
14 or suspension of any nonresident privilege to drive, for a period of
15 three years. The period of license, permit, or privilege revocation
16 may not be suspended. The court shall notify the department of
17 licensing of the conviction, and upon receiving notification of the
18 conviction the department shall revoke the offender's license, permit,
19 or privilege; or

20 (b) In the case of a person whose alcohol concentration was at
21 least 0.15, or for whom by reason of the person's refusal to take a
22 test offered pursuant to RCW 46.20.308 there is no test result
23 indicating the person's alcohol concentration:

24 (i) By imprisonment for not less than one hundred twenty days nor
25 more than one year. One hundred twenty days of the imprisonment may
26 not be suspended or deferred unless the court finds that the imposition
27 of this mandatory minimum sentence would impose a substantial risk to
28 the offender's physical or mental well-being. Whenever the mandatory
29 minimum sentence is suspended or deferred, the court shall state in
30 writing the reason for granting the suspension or deferral and the
31 facts upon which the suspension or deferral is based; and

32 (ii) By a fine of not less than one thousand five hundred dollars
33 nor more than five thousand dollars. One thousand five hundred dollars
34 of the fine may not be suspended or deferred unless the court finds the
35 offender to be indigent; and

36 (iii) By revocation of the offender's license or permit to drive,
37 or suspension of any nonresident privilege to drive, for a period of
38 four years. The period of license, permit, or privilege revocation may
39 not be suspended. The court shall notify the department of licensing

1 of the conviction, and upon receiving notification of the conviction
2 the department shall revoke the offender's license, permit, or
3 privilege.

4 (4) In exercising its discretion in setting penalties within the
5 limits allowed by this section, the court shall particularly consider
6 whether the person's driving at the time of the offense was responsible
7 for injury or damage to another or another's property.

8 (5) An offender punishable under this section is subject to the
9 alcohol assessment and treatment provisions of RCW 46.61.5056.

10 (6) After expiration of any period of suspension or revocation of
11 the offender's license, permit, or privilege to drive required by this
12 section, the department shall place the offender's driving privilege in
13 probationary status pursuant to RCW 46.20.355.

14 (7)(a) In addition to any nonsuspendable and nondeferrable jail
15 sentence required by this section, whenever the court imposes less than
16 one year in jail, the court shall also suspend but shall not defer a
17 period of confinement for a period not exceeding two years. The court
18 shall impose conditions of probation that include: (i) Not driving a
19 motor vehicle within this state without a valid license to drive and
20 proof of financial responsibility for the future; (ii) not driving a
21 motor vehicle within this state while having an alcohol concentration
22 of 0.08 or more within two hours after driving; and (iii) not refusing
23 to submit to a test of his or her breath or blood to determine alcohol
24 concentration upon request of a law enforcement officer who has
25 reasonable grounds to believe the person was driving or was in actual
26 physical control of a motor vehicle within this state while under the
27 influence of intoxicating liquor. The court may impose conditions of
28 probation that include nonrepetition, installation of an ignition
29 interlock or other biological or technical device on the probationer's
30 motor vehicle, alcohol or drug treatment, supervised probation, or
31 other conditions that may be appropriate. The sentence may be imposed
32 in whole or in part upon violation of a condition of probation during
33 the suspension period.

34 (b) For each violation of mandatory conditions of probation under
35 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall
36 order the convicted person to be confined for thirty days, which shall
37 not be suspended or deferred.

38 (c) For each incident involving a violation of a mandatory
39 condition of probation imposed under this subsection, the license,

1 permit, or privilege to drive of the person shall be suspended by the
2 court for thirty days or, if such license, permit, or privilege to
3 drive already is suspended, revoked, or denied at the time the finding
4 of probation violation is made, the suspension, revocation, or denial
5 then in effect shall be extended by thirty days. The court shall
6 notify the department of any suspension, revocation, or denial or any
7 extension of a suspension, revocation, or denial imposed under this
8 subsection.

9 (8)(a) A "prior offense" means any of the following:

10 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
11 local ordinance;

12 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
13 local ordinance;

14 (iii) A conviction for a violation of RCW 46.61.520 committed while
15 under the influence of intoxicating liquor or any drug;

16 (iv) A conviction for a violation of RCW 46.61.522 committed while
17 under the influence of intoxicating liquor or any drug;

18 (v) A conviction for a violation of RCW 46.61.5249 or an equivalent
19 local ordinance, if the conviction is the result of a charge that was
20 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an
21 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

22 (vi) An out-of-state conviction for a violation that would have
23 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
24 subsection if committed in this state;

25 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
26 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
27 equivalent local ordinance; or

28 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
29 prosecution for a violation of RCW 46.61.5249, or an equivalent local
30 ordinance, if the charge under which the deferred prosecution was
31 granted was originally filed as a violation of RCW 46.61.502 or
32 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
33 46.61.522.

34 (b) "Within (~~five~~) seven years" means that the arrest for a prior
35 offense occurred within (~~five~~) seven years of the arrest for the
36 current offense.

37 **Sec. 2.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to read
38 as follows:

1 (1) Upon the arrest of a person or upon the filing of a complaint,
2 citation, or information in a court of competent jurisdiction, based
3 upon probable cause to believe that a person has violated RCW 46.61.502
4 or 46.61.504 or any similar municipal ordinance, if such person has a
5 prior offense within ((five)) seven years as defined in RCW 46.61.5055,
6 and where the person has been provided written notice that any
7 transfer, sale, or encumbrance of such person's interest in the vehicle
8 over which that person was actually driving or had physical control
9 when the violation occurred, is unlawful pending either acquittal,
10 dismissal, sixty days after conviction, or other termination of the
11 charge, such person shall be prohibited from encumbering, selling, or
12 transferring his or her interest in such vehicle, except as otherwise
13 provided in (a), (b), and (c) of this subsection, until either
14 acquittal, dismissal, sixty days after conviction, or other termination
15 of the charge. The prohibition against transfer of title shall not be
16 stayed pending the determination of an appeal from the conviction.

17 (a) A vehicle encumbered by a bona fide security interest may be
18 transferred to the secured party or to a person designated by the
19 secured party;

20 (b) A leased or rented vehicle may be transferred to the lessor,
21 rental agency, or to a person designated by the lessor or rental
22 agency; and

23 (c) A vehicle may be transferred to a third party or a vehicle
24 dealer who is a bona fide purchaser or may be subject to a bona fide
25 security interest in the vehicle unless it is established that (i) in
26 the case of a purchase by a third party or vehicle dealer, such party
27 or dealer had actual notice that the vehicle was subject to the
28 prohibition prior to the purchase, or (ii) in the case of a security
29 interest, the holder of the security interest had actual notice that
30 the vehicle was subject to the prohibition prior to the encumbrance of
31 title.

32 (2) On conviction for a violation of either RCW 46.61.502 or
33 46.61.504 or any similar municipal ordinance where the person convicted
34 has a prior offense within ((five)) seven years as defined in RCW
35 46.61.5055, the motor vehicle the person was driving or over which the
36 person had actual physical control at the time of the offense, if the
37 person has a financial interest in the vehicle, is subject to seizure
38 and forfeiture pursuant to this section.

1 (3) A vehicle subject to forfeiture under this chapter may be
2 seized by a law enforcement officer of this state upon process issued
3 by a court of competent jurisdiction. Seizure of a vehicle may be made
4 without process if the vehicle subject to seizure has been the subject
5 of a prior judgment in favor of the state in a forfeiture proceeding
6 based upon this section.

7 (4) Seizure under subsection (3) of this section automatically
8 commences proceedings for forfeiture. The law enforcement agency under
9 whose authority the seizure was made shall cause notice of the seizure
10 and intended forfeiture of the seized vehicle to be served within
11 fifteen days after the seizure on the owner of the vehicle seized, on
12 the person in charge of the vehicle, and on any person having a known
13 right or interest in the vehicle, including a community property
14 interest. The notice of seizure may be served by any method authorized
15 by law or court rule, including but not limited to service by certified
16 mail with return receipt requested. Service by mail is complete upon
17 mailing within the fifteen-day period after the seizure. Notice of
18 seizure in the case of property subject to a security interest that has
19 been perfected on a certificate of title shall be made by service upon
20 the secured party or the secured party's assignee at the address shown
21 on the financing statement or the certificate of title.

22 (5) If no person notifies the seizing law enforcement agency in
23 writing of the person's claim of ownership or right to possession of
24 the seized vehicle within forty-five days of the seizure, the vehicle
25 is deemed forfeited.

26 (6) If a person notifies the seizing law enforcement agency in
27 writing of the person's claim of ownership or right to possession of
28 the seized vehicle within forty-five days of the seizure, the law
29 enforcement agency shall give the person or persons a reasonable
30 opportunity to be heard as to the claim or right. The hearing shall be
31 before the chief law enforcement officer of the seizing agency or the
32 chief law enforcement officer's designee, except where the seizing
33 agency is a state agency as defined in RCW 34.12.020, the hearing shall
34 be before the chief law enforcement officer of the seizing agency or an
35 administrative law judge appointed under chapter 34.12 RCW, except that
36 any person asserting a claim or right may remove the matter to a court
37 of competent jurisdiction. Removal may only be accomplished according
38 to the rules of civil procedure. The person seeking removal of the
39 matter must serve process against the state, county, political

1 subdivision, or municipality that operates the seizing agency, and any
2 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
3 within forty-five days after the person seeking removal has notified
4 the seizing law enforcement agency of the person's claim of ownership
5 or right to possession. The court to which the matter is to be removed
6 shall be the district court when the aggregate value of the vehicle is
7 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
8 before the seizing agency and any appeal therefrom shall be under Title
9 34 RCW. In a court hearing between two or more claimants to the
10 vehicle involved, the prevailing party shall be entitled to a judgment
11 for costs and reasonable attorneys' fees. The burden of producing
12 evidence shall be upon the person claiming to be the legal owner or the
13 person claiming to have the lawful right to possession of the vehicle.
14 The seizing law enforcement agency shall promptly return the vehicle to
15 the claimant upon a determination by the administrative law judge or
16 court that the claimant is the present legal owner under Title 46 RCW
17 or is lawfully entitled to possession of the vehicle.

18 (7) When a vehicle is forfeited under this chapter the seizing law
19 enforcement agency may sell the vehicle, retain it for official use, or
20 upon application by a law enforcement agency of this state release the
21 vehicle to that agency for the exclusive use of enforcing this title;
22 provided, however, that the agency shall first satisfy any bona fide
23 security interest to which the vehicle is subject under subsection (1)
24 (a) or (c) of this section.

25 (8) When a vehicle is forfeited, the seizing agency shall keep a
26 record indicating the identity of the prior owner, if known, a
27 description of the vehicle, the disposition of the vehicle, the value
28 of the vehicle at the time of seizure, and the amount of proceeds
29 realized from disposition of the vehicle.

30 (9) Each seizing agency shall retain records of forfeited vehicles
31 for at least seven years.

32 (10) Each seizing agency shall file a report including a copy of
33 the records of forfeited vehicles with the state treasurer each
34 calendar quarter.

35 (11) The quarterly report need not include a record of a forfeited
36 vehicle that is still being held for use as evidence during the
37 investigation or prosecution of a case or during the appeal from a
38 conviction.

1 (12) By January 31st of each year, each seizing agency shall remit
2 to the state treasurer an amount equal to ten percent of the net
3 proceeds of vehicles forfeited during the preceding calendar year.
4 Money remitted shall be deposited in the public safety and education
5 account.

6 (13) The net proceeds of a forfeited vehicle is the value of the
7 forfeitable interest in the vehicle after deducting the cost of
8 satisfying a bona fide security interest to which the vehicle is
9 subject at the time of seizure; and in the case of a sold vehicle,
10 after deducting the cost of sale, including reasonable fees or
11 commissions paid to independent selling agents.

12 (14) The value of a sold forfeited vehicle is the sale price. The
13 value of a retained forfeited vehicle is the fair market value of the
14 vehicle at the time of seizure, determined when possible by reference
15 to an applicable commonly used index, such as the index used by the
16 department of licensing. A seizing agency may, but need not, use an
17 independent qualified appraiser to determine the value of retained
18 vehicles. If an appraiser is used, the value of the vehicle appraised
19 is net of the cost of the appraisal.

20 **Sec. 3.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to read
21 as follows:

22 (1) Except as provided in subsection (2) of this section, the
23 director, in his or her discretion, may destroy applications for
24 vehicle licenses, copies of vehicle licenses issued, applications for
25 drivers' licenses, copies of issued drivers' licenses, certificates of
26 title and registration or other documents, records or supporting papers
27 on file in his or her office which have been microfilmed or
28 photographed or are more than five years old. If the applications for
29 vehicle licenses are renewal applications, the director may destroy
30 such applications when the computer record thereof has been updated.

31 (2)(a) The director shall not destroy records of convictions or
32 adjudications of RCW 46.61.520 and 46.61.522 or records of deferred
33 prosecutions granted under RCW 10.05.120 and shall maintain such
34 records permanently on file.

35 (b) The director shall not, within ((ten)) fifteen years from the
36 date of conviction((7)) or adjudication((7—or—entry—of—deferred
37 prosecution)), destroy records of the following:

1 (i) Convictions or adjudications of the following offenses: RCW
2 46.61.502 or 46.61.504; or
3 (ii) If the offense was originally charged as one of the offenses
4 designated in (a) or (b)(i) of this subsection, convictions or
5 adjudications of the following offenses: RCW 46.61.500 or 46.61.5249
6 or any other violation that was originally charged as one of the
7 offenses designated in (a) or (b)(i) of this subsection(~~(i) or~~
8 ~~(iii) Deferred prosecutions granted under RCW 10.05.120~~)).
9 (c) For purposes of RCW 46.52.100 and 46.52.130, offenses subject
10 to this subsection shall be considered "alcohol-related" offenses.

11 **Sec. 4.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read
12 as follows:

13 The department shall forthwith revoke the license of any driver for
14 the period of one calendar year unless otherwise provided in this
15 section, upon receiving a record of the driver's conviction of any of
16 the following offenses, when the conviction has become final:

17 (1) For vehicular homicide the period of revocation shall be two
18 years. The revocation period shall be tolled during any period of
19 total confinement for the offense;

20 (2) Vehicular assault. The revocation period shall be tolled
21 during any period of total confinement for the offense;

22 (3) Driving a motor vehicle while under the influence of
23 intoxicating liquor or a narcotic drug, or under the influence of any
24 other drug to a degree which renders the driver incapable of safely
25 driving a motor vehicle, (~~(upon a showing by the department's records~~
26 ~~that the conviction is the second such conviction for the driver within~~
27 ~~a period of five years. Upon a showing that the conviction is the~~
28 ~~third such conviction for the driver within a period of five years, the~~
29 ~~period of revocation shall be two years)~~) for the period prescribed in
30 RCW 46.61.5055;

31 (4) Any felony in the commission of which a motor vehicle is used;

32 (5) Failure to stop and give information or render aid as required
33 under the laws of this state in the event of a motor vehicle accident
34 resulting in the death or personal injury of another or resulting in
35 damage to a vehicle that is driven or attended by another;

36 (6) Perjury or the making of a false affidavit or statement under
37 oath to the department under Title 46 RCW or under any other law
38 relating to the ownership or operation of motor vehicles;

1 (7) Reckless driving upon a showing by the department's records
2 that the conviction is the third such conviction for the driver within
3 a period of two years.

4 **Sec. 5.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read
5 as follows:

6 (1) Notwithstanding any other provision of this title, a person is
7 guilty of driving a motor vehicle after consuming alcohol if the person
8 operates a motor vehicle within this state and the person:

9 (a) Is under the age of twenty-one;

10 (b) Has, within two hours after operating the motor vehicle, an
11 alcohol concentration of ~~((0.02 or more))~~ at least 0.02 but less than
12 the concentration specified in RCW 46.61.502, as shown by analysis of
13 the person's breath or blood made under RCW 46.61.506.

14 (2) It is an affirmative defense to a violation of subsection (1)
15 of this section which the defendant must prove by a preponderance of
16 the evidence that the defendant consumed a sufficient quantity of
17 alcohol after the time of driving and before the administration of an
18 analysis of the person's breath or blood to cause the defendant's
19 alcohol concentration to be ~~((0.02 or more))~~ in violation of subsection
20 (1) of this section within two hours after driving. The court shall
21 not admit evidence of this defense unless the defendant notifies the
22 prosecution prior to the earlier of: (a) Seven days prior to trial; or
23 (b) the omnibus or pretrial hearing in the case of the defendant's
24 intent to assert the affirmative defense.

25 (3) Analyses of blood or breath samples obtained more than two
26 hours after the alleged driving may be used as evidence that within two
27 hours of the alleged driving, a person had an alcohol concentration
28 ~~((of 0.02 or more))~~ in violation of subsection (1) of this section.

29 (4) A violation of this section is a misdemeanor.

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 46.61 RCW
31 to read as follows:

32 (1) A defendant who is arrested for an offense involving driving
33 while under the influence as defined in RCW 46.61.502, driving under
34 age twenty-one after consuming alcohol as defined in RCW 46.61.503, or
35 being in physical control of a vehicle while under the influence as
36 defined in RCW 46.61.504, shall be required to appear in person before
37 a magistrate within one judicial day after the arrest.

1 (2) A defendant who is charged by citation, complaint, or
2 information with an offense involving driving while under the influence
3 as defined in RCW 46.61.502, driving under age twenty-one after
4 consuming alcohol as defined in RCW 46.61.503, or being in physical
5 control of a vehicle while under the influence as defined in RCW
6 46.61.504, and who is not arrested, shall appear in court for
7 arraignment in person as soon as practicable, but in no event later
8 than fourteen days after the next day on which court is in session
9 following the issuance of the citation or the filing of the complaint
10 or information.

11 (3) At the time of an appearance required by this section, the
12 court shall determine the necessity of imposing conditions of pretrial
13 release according to the procedures established by court rule for a
14 preliminary appearance or an arraignment.

15 (4) Appearances required by this section are mandatory and may not
16 be waived.

17 **Sec. 7.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read
18 as follows:

19 (1) Any person who operates a motor vehicle within this state is
20 deemed to have given consent, subject to the provisions of RCW
21 46.61.506, to a test or tests of his or her breath or blood for the
22 purpose of determining the alcohol concentration or presence of any
23 drug in his or her breath or blood if arrested for any offense where,
24 at the time of the arrest, the arresting officer has reasonable grounds
25 to believe the person had been driving or was in actual physical
26 control of a motor vehicle while under the influence of intoxicating
27 liquor or any drug or was in violation of RCW 46.61.503.

28 (2) The test or tests of breath shall be administered at the
29 direction of a law enforcement officer having reasonable grounds to
30 believe the person to have been driving or in actual physical control
31 of a motor vehicle within this state while under the influence of
32 intoxicating liquor or the person to have been driving or in actual
33 physical control of a motor vehicle while having alcohol in a
34 concentration (~~of 0.02 or more~~) in violation of RCW 46.61.503 in his
35 or her system and being under the age of twenty-one. However, in those
36 instances where the person is incapable due to physical injury,
37 physical incapacity, or other physical limitation, of providing a
38 breath sample or where the person is being treated in a hospital,

1 clinic, doctor's office, emergency medical vehicle, ambulance, or other
2 similar facility in which a breath testing instrument is not present or
3 where the officer has reasonable grounds to believe that the person is
4 under the influence of a drug, a blood test shall be administered by a
5 qualified person as provided in RCW 46.61.506(4). The officer shall
6 inform the person of his or her right to refuse the breath or blood
7 test, and of his or her right to have additional tests administered by
8 any qualified person of his or her choosing as provided in RCW
9 46.61.506. The officer shall warn the driver that:

10 (a) His or her license, permit, or privilege to drive will be
11 revoked or denied if he or she refuses to submit to the test;

12 (b) His or her license, permit, or privilege to drive will be
13 suspended, revoked, denied, or placed in probationary status if the
14 test is administered and the test indicates the alcohol concentration
15 of the person's breath or blood is 0.10 or more, in the case of a
16 person age twenty-one or over, or (~~0.02 or more~~) in violation of RCW
17 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age
18 twenty-one; and

19 (c) His or her refusal to take the test may be used in a criminal
20 trial.

21 (3) Except as provided in this section, the test administered shall
22 be of the breath only. If an individual is unconscious or is under
23 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
24 or vehicular assault as provided in RCW 46.61.522, or if an individual
25 is under arrest for the crime of driving while under the influence of
26 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
27 results from an accident in which there has been serious bodily injury
28 to another person, a breath or blood test may be administered without
29 the consent of the individual so arrested.

30 (4) Any person who is dead, unconscious, or who is otherwise in a
31 condition rendering him or her incapable of refusal, shall be deemed
32 not to have withdrawn the consent provided by subsection (1) of this
33 section and the test or tests may be administered, subject to the
34 provisions of RCW 46.61.506, and the person shall be deemed to have
35 received the warnings required under subsection (2) of this section.

36 (5) If, following his or her arrest and receipt of warnings under
37 subsection (2) of this section, the person arrested refuses upon the
38 request of a law enforcement officer to submit to a test or tests of

1 his or her breath or blood, no test shall be given except as authorized
2 under subsection (3) or (4) of this section.

3 (6) If, after arrest and after the other applicable conditions and
4 requirements of this section have been satisfied, a test or tests of
5 the person's blood or breath is administered and the test results
6 indicate that the alcohol concentration of the person's breath or blood
7 is 0.10 or more if the person is age twenty-one or over, or is (~~0.02~~
8 ~~or more~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the
9 person is under the age of twenty-one, or the person refuses to submit
10 to a test, the arresting officer or other law enforcement officer at
11 whose direction any test has been given, or the department, where
12 applicable, if the arrest results in a test of the person's blood,
13 shall:

14 (a) Serve notice in writing on the person on behalf of the
15 department of its intention to suspend, revoke, deny, or place in
16 probationary status the person's license, permit, or privilege to drive
17 as required by subsection (7) of this section;

18 (b) Serve notice in writing on the person on behalf of the
19 department of his or her right to a hearing, specifying the steps he or
20 she must take to obtain a hearing as provided by subsection (8) of this
21 section;

22 (c) Mark the person's Washington state driver's license or permit
23 to drive, if any, in a manner authorized by the department;

24 (d) Serve notice in writing that the marked license or permit, if
25 any, is a temporary license that is valid for sixty days from the date
26 of arrest or from the date notice has been given in the event notice is
27 given by the department following a blood test, or until the
28 suspension, revocation, or denial of the person's license, permit, or
29 privilege to drive is sustained at a hearing pursuant to subsection (8)
30 of this section, whichever occurs first. No temporary license is valid
31 to any greater degree than the license or permit that it replaces; and

32 (e) Immediately notify the department of the arrest and transmit to
33 the department within seventy-two hours, except as delayed as the
34 result of a blood test, a sworn report or report under a declaration
35 authorized by RCW 9A.72.085 that states:

36 (i) That the officer had reasonable grounds to believe the arrested
37 person had been driving or was in actual physical control of a motor
38 vehicle within this state while under the influence of intoxicating
39 liquor or drugs, or both, or was under the age of twenty-one years and

1 had been driving or was in actual physical control of a motor vehicle
2 while having an alcohol concentration (~~(of 0.02 or more)~~) in violation
3 of RCW 46.61.503;

4 (ii) That after receipt of the warnings required by subsection (2)
5 of this section the person refused to submit to a test of his or her
6 blood or breath, or a test was administered and the results indicated
7 that the alcohol concentration of the person's breath or blood was 0.10
8 or more if the person is age twenty-one or over, or was (~~0.02 or~~
9 ~~more~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the
10 person is under the age of twenty-one; and

11 (iii) Any other information that the director may require by rule.

12 (7) The department of licensing, upon the receipt of a sworn report
13 or report under a declaration authorized by RCW 9A.72.085 under
14 subsection (6)(e) of this section, shall suspend, revoke, deny, or
15 place in probationary status the person's license, permit, or privilege
16 to drive or any nonresident operating privilege, as provided in RCW
17 46.20.3101, such suspension, revocation, denial, or placement in
18 probationary status to be effective beginning sixty days from the date
19 of arrest or from the date notice has been given in the event notice is
20 given by the department following a blood test, or when sustained at a
21 hearing pursuant to subsection (8) of this section, whichever occurs
22 first.

23 (8) A person receiving notification under subsection (6)(b) of this
24 section may, within thirty days after the notice has been given,
25 request in writing a formal hearing before the department. The person
26 shall pay a fee of one hundred dollars as part of the request. If the
27 request is mailed, it must be postmarked within thirty days after
28 receipt of the notification. Upon timely receipt of such a request for
29 a formal hearing, including receipt of the required one hundred dollar
30 fee, the department shall afford the person an opportunity for a
31 hearing. Except as otherwise provided in this section, the hearing is
32 subject to and shall be scheduled and conducted in accordance with RCW
33 46.20.329 and 46.20.332. The hearing shall be conducted in the county
34 of the arrest, except that all or part of the hearing may, at the
35 discretion of the department, be conducted by telephone or other
36 electronic means. The hearing shall be held within sixty days
37 following the arrest or following the date notice has been given in the
38 event notice is given by the department following a blood test, unless
39 otherwise agreed to by the department and the person, in which case the

1 action by the department shall be stayed, and any valid temporary
2 license marked under subsection (6)(c) of this section extended, if the
3 person is otherwise eligible for licensing. For the purposes of this
4 section, the scope of the hearing shall cover the issues of whether a
5 law enforcement officer had reasonable grounds to believe the person
6 had been driving or was in actual physical control of a motor vehicle
7 within this state while under the influence of intoxicating liquor or
8 any drug or had been driving or was in actual physical control of a
9 motor vehicle within this state while having alcohol in his or her
10 system in a concentration (~~(of 0.02 or more)~~) in violation of RCW
11 46.61.503 and was under the age of twenty-one, whether the person was
12 placed under arrest, and (a) whether the person refused to submit to
13 the test or tests upon request of the officer after having been
14 informed that such refusal would result in the revocation of the
15 person's license, permit, or privilege to drive, or (b) if a test or
16 tests were administered, whether the applicable requirements of this
17 section were satisfied before the administration of the test or tests,
18 whether the person submitted to the test or tests, or whether a test
19 was administered without express consent as permitted under this
20 section, and whether the test or tests indicated that the alcohol
21 concentration of the person's breath or blood was 0.10 or more if the
22 person was age twenty-one or over at the time of the arrest, or was
23 (~~(0.02 or more)~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504
24 if the person was under the age of twenty-one at the time of the
25 arrest. The sworn report or report under a declaration authorized by
26 RCW 9A.72.085 submitted by a law enforcement officer is prima facie
27 evidence that the officer had reasonable grounds to believe the person
28 had been driving or was in actual physical control of a motor vehicle
29 within this state while under the influence of intoxicating liquor or
30 drugs, or both, or the person had been driving or was in actual
31 physical control of a motor vehicle within this state while having
32 alcohol in his or her system in a concentration (~~(of 0.02 or more)~~) in
33 violation of RCW 46.61.503 and was under the age of twenty-one and that
34 the officer complied with the requirements of this section.

35 A hearing officer shall conduct the hearing, may issue subpoenas
36 for the attendance of witnesses and the production of documents, and
37 shall administer oaths to witnesses. The hearing officer shall not
38 issue a subpoena for the attendance of a witness at the request of the
39 person unless the request is accompanied by the fee required by RCW

1 5.56.010 for a witness in district court. The sworn report or report
2 under a declaration authorized by RCW 9A.72.085 of the law enforcement
3 officer and any other evidence accompanying the report shall be
4 admissible without further evidentiary foundation and the
5 certifications authorized by the criminal rules for courts of limited
6 jurisdiction shall be admissible without further evidentiary
7 foundation. The person may be represented by counsel, may question
8 witnesses, may present evidence, and may testify. The department shall
9 order that the suspension, revocation, denial, or placement in
10 probationary status either be rescinded or sustained.

11 (9) If the suspension, revocation, denial, or placement in
12 probationary status is sustained after such a hearing, the person whose
13 license, privilege, or permit is suspended, revoked, denied, or placed
14 in probationary status has the right to file a petition in the superior
15 court of the county of arrest to review the final order of revocation
16 by the department in the same manner as an appeal from a decision of a
17 court of limited jurisdiction. The appellant must pay the costs
18 associated with obtaining the record of the hearing before the hearing
19 officer. The filing of the appeal does not stay the effective date of
20 the suspension, revocation, denial, or placement in probationary
21 status. A petition filed under this subsection must include the
22 petitioner's grounds for requesting review. Upon granting petitioner's
23 request for review, the court shall review the department's final order
24 of suspension, revocation, denial, or placement in probationary status
25 as expeditiously as possible. If judicial relief is sought for a stay
26 or other temporary remedy from the department's action, the court shall
27 not grant such relief unless the court finds that the appellant is
28 likely to prevail in the appeal and that without a stay the appellant
29 will suffer irreparable injury. If the court stays the suspension,
30 revocation, denial, or placement in probationary status it may impose
31 conditions on such stay.

32 (10) If a person whose driver's license, permit, or privilege to
33 drive has been or will be suspended, revoked, denied, or placed in
34 probationary status under subsection (7) of this section, other than as
35 a result of a breath test refusal, and who has not committed an offense
36 within the last five years for which he or she was granted a deferred
37 prosecution under chapter 10.05 RCW, petitions a court for a deferred
38 prosecution on criminal charges arising out of the arrest for which
39 action has been or will be taken under subsection (7) of this section,

1 the court may direct the department to stay any actual or proposed
2 suspension, revocation, denial, or placement in probationary status for
3 at least forty-five days but not more than ninety days. If the court
4 stays the suspension, revocation, denial, or placement in probationary
5 status, it may impose conditions on such stay. If the person is
6 otherwise eligible for licensing, the department shall issue a
7 temporary license, or extend any valid temporary license marked under
8 subsection (6) of this section, for the period of the stay. If a
9 deferred prosecution treatment plan is not recommended in the report
10 made under RCW 10.05.050, or if treatment is rejected by the court, or
11 if the person declines to accept an offered treatment plan, or if the
12 person violates any condition imposed by the court, then the court
13 shall immediately direct the department to cancel the stay and any
14 temporary marked license or extension of a temporary license issued
15 under this subsection.

16 A suspension, revocation, or denial imposed under this section,
17 other than as a result of a breath test refusal, shall be stayed if the
18 person is accepted for deferred prosecution as provided in chapter
19 10.05 RCW for the incident upon which the suspension, revocation, or
20 denial is based. If the deferred prosecution is terminated, the stay
21 shall be lifted and the suspension, revocation, or denial reinstated.
22 If the deferred prosecution is completed, the stay shall be lifted and
23 the suspension, revocation, or denial canceled.

24 (11) When it has been finally determined under the procedures of
25 this section that a nonresident's privilege to operate a motor vehicle
26 in this state has been suspended, revoked, or denied, the department
27 shall give information in writing of the action taken to the motor
28 vehicle administrator of the state of the person's residence and of any
29 state in which he or she has a license.

30 **Sec. 8.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read
31 as follows:

32 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
33 deny the arrested person's license, permit, or privilege to drive as
34 follows:

35 (1) In the case of a person who has refused a test or tests:

36 (a) For a first refusal within (~~(five)~~) seven years, where there
37 has not been a previous incident within (~~(five)~~) seven years that

1 resulted in administrative action under this section, revocation or
2 denial for one year;

3 (b) For a second or subsequent refusal within ((five)) seven years,
4 or for a first refusal where there has been one or more previous
5 incidents within ((five)) seven years that have resulted in
6 administrative action under this section, revocation or denial for two
7 years or until the person reaches age twenty-one, whichever is longer.
8 A revocation imposed under this subsection (1)(b) shall run
9 consecutively to the period of any suspension, revocation, or denial
10 imposed pursuant to a criminal conviction arising out of the same
11 incident.

12 (2) In the case of an incident where a person has submitted to or
13 been administered a test or tests indicating that the alcohol
14 concentration of the person's breath or blood was 0.10 or more:

15 (a) For a first incident within ((five)) seven years, where there
16 has not been a previous incident within ((five)) seven years that
17 resulted in administrative action under this section, placement in
18 probationary status as provided in RCW 46.20.355;

19 (b) For a second or subsequent incident within ((five)) seven
20 years, revocation or denial for two years.

21 (3) In the case of an incident where a person under age twenty-one
22 has submitted to or been administered a test or tests indicating that
23 the alcohol concentration of the person's breath or blood was ((0.02 or
24 more)) in violation of RCW 46.61.503:

25 (a) For a first incident within ((five)) seven years, suspension or
26 denial for ninety days;

27 (b) For a second or subsequent incident within ((five)) seven
28 years, revocation or denial for one year or until the person reaches
29 age twenty-one, whichever is longer.

30 **Sec. 9.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to read
31 as follows:

32 (1) Any person licensed under this chapter who is convicted of an
33 offense relating to motor vehicles for which suspension or revocation
34 of the driver's license is mandatory, other than vehicular homicide or
35 vehicular assault, may submit to the department an application for an
36 occupational driver's license. The department, upon receipt of the
37 prescribed fee and upon determining that the petitioner is engaged in
38 an occupation or trade that makes it essential that the petitioner

1 operate a motor vehicle, may issue an occupational driver's license and
2 may set definite restrictions as provided in RCW 46.20.394. No person
3 may petition for, and the department shall not issue, an occupational
4 driver's license that is effective during the first thirty days of any
5 suspension or revocation imposed for a violation of RCW 46.61.502 or
6 46.61.504. A person aggrieved by the decision of the department on the
7 application for an occupational driver's license may request a hearing
8 as provided by rule of the department.

9 (2) An applicant for an occupational driver's license is eligible
10 to receive such license only if:

11 (a) Within one year immediately preceding the date of the offense
12 that gave rise to the present conviction, the applicant has not
13 committed any offense relating to motor vehicles for which suspension
14 or revocation of a driver's license is mandatory; and

15 (b) Within ~~((five))~~ seven years immediately preceding the date of
16 the offense that gave rise to the present conviction, the applicant has
17 not committed any of the following offenses: (i) Driving or being in
18 actual physical control of a motor vehicle while under the influence of
19 intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or
20 (iii) vehicular assault under RCW 46.61.522; and

21 (c) The applicant is engaged in an occupation or trade that makes
22 it essential that he or she operate a motor vehicle; and

23 (d) The applicant files satisfactory proof of financial
24 responsibility pursuant to chapter 46.29 RCW.

25 (3) The director shall cancel an occupational driver's license upon
26 receipt of notice that the holder thereof has been convicted of
27 operating a motor vehicle in violation of its restrictions, or of an
28 offense that pursuant to chapter 46.20 RCW would warrant suspension or
29 revocation of a regular driver's license. The cancellation is
30 effective as of the date of the conviction, and continues with the same
31 force and effect as any suspension or revocation under this title.

32 NEW SECTION. **Sec. 10.** If specific funding for the purposes of
33 this act, referencing this act by bill or chapter number, is not
34 provided by June 30, 1998, in the omnibus appropriations act, this act
35 is null and void.

36 NEW SECTION. **Sec. 11.** If this act mandates an increased level of
37 service by local governments, the local government may, under RCW

1 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the
2 legislature. The claims shall be subject to verification by the office
3 of financial management.

4 NEW SECTION. **Sec. 12.** This act takes effect January 1, 1999."

5 **2SHB 3070** - S AMD (S5425.1) - 883
6 By Senator Roach

7 ADOPTED AS AMENDED 3/5/98

8 On page 1, line 1 of the title, after "influence;" strike the
9 remainder of the title and insert "amending RCW 46.61.5058, 46.01.260,
10 46.20.285, 46.61.503, 46.20.308, 46.20.3101, and 46.20.391; reenacting
11 and amending RCW 46.61.5055; adding a new section to chapter 46.61 RCW;
12 creating new sections; prescribing penalties; and providing an
13 effective date."

--- END ---